

AMENDED IN SENATE JULY 14, 2009

AMENDED IN SENATE JULY 1, 2009

AMENDED IN ASSEMBLY MAY 18, 2009

AMENDED IN ASSEMBLY MAY 6, 2009

AMENDED IN ASSEMBLY APRIL 15, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 979**

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**Introduced by Assembly Member Tom Berryhill**

February 27, 2009

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An act to add Sections 1020 and 1021 to the Fish and Game Code, relating to fish and game.

### LEGISLATIVE COUNSEL'S DIGEST

AB 979, as amended, Tom Berryhill. Hunting or fishing: local regulation.

The California Constitution provides for the delegation to the Fish and Game Commission of powers relating to the protection and propagation of fish and game. Existing statutory law delegates to the commission the power to regulate the taking or possession of birds, mammals, fish, amphibia, and reptiles in accordance with prescribed laws. Under existing law, the Department of Fish and Game exercises various functions with regard to the taking of fish and game. Under existing law, a city or county exercises certain limited authority with regard to the regulation of fish and game for the protection of public health and safety.

This bill would provide that the state fully occupies the field of hunting and fishing. The bill would prohibit a city or county from adopting an ordinance or regulation that affects the taking of fish and game, unless the ordinance or regulation is both necessary for public health and safety and has only an incidental impact on the field of hunting and fishing preempted by state law. The bill would also provide that unless otherwise authorized by the Fish and Game Code or other state or federal law, the commission and the department are the only entities that may adopt or promulgate regulations regarding the taking of fish and game on any lands or waters within the state, except as specified. *The bill would exempt from its provisions local ordinances and regulations that regulate trapping.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1020 is added to the Fish and Game Code,  
2     to read:  
3     1020. (a) The Legislature finds and declares all of the  
4     following:  
5     (1) The California Supreme Court in *In re Makings* (1927) 200  
6     Cal. 474, determined that Section 25 ½ of Article IV of the  
7     California Constitution, as currently set forth in Section 20 of  
8     Article IV, prohibits local governmental entities from regulating,  
9     or interfering with, fish and game matters and places this  
10    responsibility with the Legislature in order to conserve California's  
11    fish and wildlife populations and permit the largest use of fish and  
12    game compatible with the reasonable protection thereof.  
13    (2) The Fish and Game Commission was established in 1870  
14    to assist in the science-based management of California's fish and  
15    wildlife resources. The California Constitution permits the  
16    Legislature to delegate to the commission certain powers relating  
17    to the management of fish and game, and the Legislature has  
18    delegated to the commission regulatory powers over the taking  
19    and possession of fish and game, as set forth in this code.  
20    (3) Hunting and fishing are statistically among the safest outdoor  
21    recreational activities, particularly as they relate to impacts on the  
22    general public, and are already well regulated by the state through  
23    mandatory safety requirements, weapons laws, and regulations

1 adopted by the commission. Additional local regulation  
2 significantly impedes the uniform, science-based administration  
3 of fish and game laws. Hunting and fishing activities are also  
4 compatible with other recreational uses on many public lands and  
5 waters throughout the state.

6 (b) In enacting this section and Section 1021, it is the intent of  
7 the Legislature to affirm, subject to applicable state and federal  
8 law, the exclusive legal authority granted to the commission and  
9 the department with regard to the taking and possession of fish  
10 and game and thereby ensure necessary comprehensive statewide  
11 control by the commission and the department over all fish and  
12 game matters for wildlife conservation purposes and the protection  
13 of, and access to, hunting and fishing opportunities for private  
14 landowners and the public.

15 SEC. 2. Section 1021 is added to the Fish and Game Code, to  
16 read:

17 1021. (a) (1) The state fully occupies the field of hunting and  
18 fishing pursuant to this code, regulations adopted by the  
19 commission pursuant to this code, and Section 20 of Article IV of  
20 the California Constitution, and all local ordinances and regulations  
21 are subject to this section.

22 (2) A city or county shall not adopt an ordinance or regulation  
23 that affects the taking of fish and game unless the ordinance or  
24 regulation is both necessary for public health and safety and has  
25 only an incidental impact on the field of hunting and fishing  
26 preempted by state law. The ordinance or regulation shall not  
27 indiscriminately extend or apply to any areas where the taking of  
28 fish and game may occur without endangering public health and  
29 safety nor to any lands or waters owned or managed by the state  
30 or federal government.

31 (b) The commission, the department, or any other governmental  
32 entity legally authorized to affect the taking of fish and game on  
33 navigable waters held in public trust shall, to the extent possible,  
34 ensure that the fishing and hunting rights of the public guaranteed  
35 under Section 25 of Article I of, and Section 4 of Article X of, the  
36 California Constitution, are protected in a manner consistent with  
37 those provisions.

38 (c) (1) Unless otherwise authorized by this code or other state  
39 or federal law, the commission and the department are the only  
40 entities in this state that shall adopt or promulgate regulations

1 regarding the taking of fish and game on any lands or waters within  
2 the state.

3 (2) Nothing in this section or Section 1020 prohibits a public  
4 or private landowner, or the landowner's designee, from regulating  
5 public access or ~~enforcing reasonable safety measures~~ *public use*  
6 on property that the landowner owns in fee, leases, manages, holds  
7 an easement in, ~~or otherwise lawfully controls upon, or is otherwise~~  
8 *lawfully authorized to control for those purposes*, in a manner  
9 consistent with state law.

10 (d) *Local ordinances and regulations that regulate trapping*  
11 *are not subject to this section.*